

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: 2009SE2467
)	EEOC NO.: 440-2009-00829
<b>THOMAS F. SIMPSON</b> )	ALS NO.: 10-0036
)	
)	
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Thomas F. Simpson's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>[1]</sup> of Charge No. 2009SE2467; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF JURISDICTION**

In support of which determination the Commission states the following findings of fact and reasons:

1. On January 7, 2009, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that on November 11, 2008, O'Brien Steel Service ("Employer") failed to accommodate his physical disability, Post Concussion Syndrome (Count A), and discharged him on November 11, 2008, because of his disability (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On December 22, 2009, the Respondent dismissed the Petitioner's charge for Lack of Jurisdiction. On January 16, 2010, the Petitioner filed this timely Request.
2. On November 3, 2008, the Employer hired the Petitioner as a Roll Man.
3. On November 6, 2008, the Petitioner suffered a head injury at home.
4. As a result of his head injury, the Petitioner called in sick and did not return to work on Friday November 7, 2008, nor on Monday November 10, 2008.

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<sup>[1]</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

5. On November 10, 2008, the Petitioner saw a physician. The physician diagnosed the Petitioner with Post Concussion Syndrome. The physician advised that the Petitioner needed to take three (3) additional days off from work in order to rest.
6. On November 11, 2008, the Petitioner called his Employer and asked for an additional three (3) days off from work. Through its plant manager, the Employer denied the Petitioner's request. The plant manager told the Petitioner that the Employer needed people who could work, and then discharged the Petitioner.
7. The Employer stated the Petitioner was discharged due to poor attendance.
8. In Count A of his charge of discrimination, the Petitioner alleged that when the Employer denied his request for an additional three (3) days off from work on November 11, 2008, the Employer refused the Petitioner's request for a reasonable accommodation for his alleged disability, Post Concussion Syndrome. In Count B, the Petitioner states the Employer discharged him because of his alleged disability.
9. When the Petitioner filed his charge of discrimination with the Respondent, the Respondent provided the Petitioner with a medical questionnaire. The Petitioner was required to have his physician complete the medical questionnaire and return the completed medical questionnaire to the Respondent.
10. The Petitioner's physician completed the medical questionnaire on November 2, 2009, and subsequently returned the completed medical questionnaire to the Respondent. The physician stated on the medical questionnaire that on November 10, 2008, the Petitioner was diagnosed with a Closed Head Injury and Post Concussive Syndrome. The physician indicated that the Petitioner's condition was transitory, and that it was not significantly debilitating or disfiguring.
11. Based on the completed medical questionnaire, the Respondent determined that the Petitioner was not disabled within the meaning of the Act at the time the alleged civil rights violations had occurred. The Respondent subsequently dismissed the Petitioner's charge for lack of jurisdiction.
12. In his Request, the Petitioner argues that an employer should not have the authority to discharge an employee when the employee has obtained a doctor's prescription recommending time off from work due to an injury. The Petitioner further states that he still suffers from headaches and blurred vision, and he is still under a doctor's care.
13. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for Lack of Jurisdiction because the Petitioner was not disabled within the meaning of the Act on the date the alleged civil rights violation occurred.

### **Conclusion**

The Commission concludes that the Respondent properly dismissed all counts of the Petitioner's charge for lack of jurisdiction because the Petitioner did not prove that he was disabled within the meaning of the Act on the date the alleged civil rights violations occurred.

Pursuant to 56 Ill. Admin. Code, Ch. II, § 2500.20(b)(1), conditions which are transitory, and which are not significantly debilitating or disfiguring are not considered disabilities within the meaning of the Act.

The Petitioner's own physician stated that the Petitioner's Post Concussion Syndrome was transitory, and that it was not significantly disfiguring or debilitating. Based on this diagnosis, the Respondent correctly concluded that the Petitioner was not disabled within the meaning of the Act.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**WHEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and O'Brien Steel Service, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

**STATE OF ILLINOIS**

**HUMAN RIGHTS COMMISSION**

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Entered this 25<sup>th</sup> day of August 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini